

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

IN RE: GENERIC PHARMACEUTICALS  
PRICING ANTITRUST LITIGATION

THIS DOCUMENT RELATES TO:

*Ahold USA, Inc., et al. v. Actavis  
Holdco U.S., Inc. et al.*

*1199SEIU Nat'l Benefit Fund, et al.  
v. Actavis Holdco US, Inc.*

*Humana Inc. v. Actavis Elizabeth,  
LLC et al.*

*West Val Pharm., et al. v. Actavis  
Holdco U.S., Inc.*

*The Kroger Co., et al. v. Actavis  
Holdco U.S., Inc.*

*Marion Diagnostic Center, LLC, et  
al. v. McKesson Corp., et al.*

*The State Attorneys General  
Litigation*

MDL 2724  
16-md-2724

HON. CYNTHIA M. RUFE

Civil Action Nos.

18-2641  
18-2401  
18-3299  
18-2533  
18-284  
18-4137  
17-3768

**ORAL ARGUMENT REQUESTED**

**APOTEX CORP.'S INDIVIDUAL MOTION TO DISMISS  
PLAINTIFFS' OVERARCHING CONSPIRACY CLAIMS**

Pursuant to Federal Rule of Civil Procedure 12(b)(6), and for the reasons set forth in Defendant Apotex Corp.'s ("Apotex") accompanying individual brief in support of this motion to dismiss, the joint Defendants' motion to dismiss Plaintiffs' overarching conspiracy claims, and each Defendant's individual motion to dismiss Plaintiffs' overarching conspiracy claims, Apotex, by and through its undersigned counsel, respectfully moves this honorable Court to

dismiss the following counts, causes of action, or claims for relief set forth in the following Plaintiffs' complaints:

- a) The Claim for Relief for Conspiracy in Restraint of Trade in Violation of Sherman Act Sections 1 and 3 set forth in the Direct Purchaser Class Action Complaint, insofar as that Claim for Relief is brought against Apotex for its alleged participation in an overarching conspiracy to fix, raise and/or stabilize prices or allocate markets for generic pharmaceuticals, and insofar as that Claim for Relief seeks to impose joint and several liability upon Apotex for its alleged participation in an overarching conspiracy. *See* Direct Purchaser Class Action Complaint, ¶¶ 495–503;
- b) The First Count for Violation of Sections 1 and 3 of the Sherman Act – Injunctive Relief and Second Count for Violation of Sections 1 and 3 of the Sherman Act – Damages set forth in the Indirect Reseller Plaintiffs' Amended Overarching Complaint, insofar as those Counts are brought against Apotex for its alleged participation in an overarching conspiracy to fix, raise and/or stabilize prices or allocate markets for generic pharmaceuticals, and insofar as those Counts seek to impose joint and several liability upon Apotex for its alleged participation in the an overarching conspiracy. *See* Indirect Reseller Plaintiffs' Amended Overarching Complaint, ¶¶ 358–74;
- c) The First Count for Violation of Sections 1 and 3 of the Sherman Act set forth in the End-Payer Class Action Complaint, insofar as that Count is brought against Apotex for its alleged participation in an overarching conspiracy to fix, raise, and/or stabilize prices or allocate markets for generic pharmaceuticals, and insofar

as that Count seeks to impose joint and several liability upon Apotex for its alleged participation in an overarching conspiracy. *See* End-Payer Class Action Complaint, ¶¶ 702–13;

- d) Count CVI for Violation of Section 1 of the Sherman Act (All Subject Drugs) and Count CX for Declaratory and Injunctive Relief Under Section 16 of the Clayton Act for Violations of Sections 1 and 2 of the Sherman Act (All Subject Drugs) set forth in Humana, Inc.’s Amended Complaint, insofar as those Counts are brought against Apotex for its alleged participation in an overarching conspiracy to fix, raise, and/or stabilize prices or allocate markets for generic pharmaceuticals, and insofar as those Counts seek to impose joint and several liability upon Apotex for its alleged participation in an overarching conspiracy. *See* Humana, Inc. Amended Complaint, ¶¶ 1686–96, 1723–29;
- e) Counts One, Two, Three, Four, Five, Seven, Eight, Nine, Ten, Eleven, Twelve, Thirteen, Fourteen, Fifteen, Sixteen, Seventeen, and Eighteen set forth in the Plaintiff States’ Consolidated Amended Complaint, insofar as those Counts are brought against Apotex for its alleged participation in an overarching conspiracy to fix, raise, and/or stabilize prices or allocate markets for generic pharmaceuticals, and insofar as those Counts seek to impose joint and several liability upon Apotex for its alleged participation in an overarching conspiracy. *See* Plaintiff States’ Consolidated Amended Complaint, ¶¶ 470–504, 512–605;
- f) Count One for Overarching Conspiracy on All Price-Fixed Generic Drugs Against All Defendants set forth in The Kroger Co., Albertsons Companies, LLC, and H.E. Butt Grocery Company L.P. (the “Kroger Plaintiffs”) Amended Complaint,

insofar as that Count is brought against Apotex for its alleged participation in an overarching conspiracy to fix, raise, and/or stabilize prices or allocate markets for generic pharmaceuticals, and insofar as that Count seeks to impose joint and several liability upon Apotex for its alleged participation in an overarching conspiracy. *See* Kroger Plaintiffs’ Amended Complaint, ¶¶ 812–32; and

- g) Count I for Restraint of Trade (Section 1 of the Sherman Act) set forth in Marion Diagnostic Center, LLC and Marion Healthcare, LLC’s (the “Marion Plaintiffs”) Class Action Complaint, insofar as that Count is brought against Apotex for its alleged participation in an overarching conspiracy to fix, raise, and/or stabilize prices or allocate markets for generic pharmaceuticals, and insofar as that Count seeks to impose joint and several liability upon Apotex for its alleged participation in an overarching conspiracy. *See* Marion Plaintiffs’ Class Action Complaint, ¶¶ 113–16.

Pursuant to Rule 7.1(f) of the Local Rules of Civil Procedure, Apotex requests oral argument on this Motion.

Dated: February 21, 2019

/s/ James W. Matthews

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**CERTIFICATE OF SERVICE**

I hereby certify on this 21st day of February 2019, a true and correct copy of the foregoing was filed electronically and is available for viewing and downloading from the Court's ECF System. Notice of this filing will be sent to all counsel of record by operation of the ECF System.

/s/ James W. Matthews

James W. Matthews